

Review, Pursuant to Assembly Resolution, Relating to the Handling of Certain Allegations made against a Member

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Introduction

The Speaker of the ACT Legislative Assembly, Ms Joy Burch MLA, pursuant to an Assembly resolution relating to the handling of certain allegations made against a now former Member of the Assembly, Mr Johnathan Davis, asked me to conduct an independent review. The full Assembly resolution is provided at [Annexure 1](#). I was contracted to undertake the review on 4 December 2023.

Specifically, my terms of reference were:

- (a) the timeline during which material details of the allegations were received by Mr Rattenbury, Ms Davidson and the senior staff member given responsibility for conducting initial inquiries;
- (b) the appropriateness of the steps taken by Mr Rattenbury and Ms Davidson in relation to the handling of the allegations and having regard to applicable laws, good governance, compliance with available policies, and community expectations;
- (c) the timeliness and completeness of reporting the allegations to relevant authorities; and
- (d) best practice and possible changes to laws, policies, and procedures to ensure that allegations of sexual misconduct against an MLA particularly those involving a child or young person—are appropriately reported and investigated, and in a way that is trauma-informed and responsive to the needs of victim/survivors.

There are several aspects of this review, namely establishing the facts of what happened when, determining whether the Greens Party leaders involved acted appropriately, and suggesting areas for reform of Assembly practices. I decided to structure the review report accordingly, covering (a) and (c) together in so far as elements of the timeline overlap, followed by (b), commentary on (c) and then (d).

In bringing together the information contained in this report, I have relied upon submissions, publicly available information about Assembly policies and procedures, and the law, together with interviews and exchanges between myself and others involved in the review.

I note that to date, there has not been any finding about Mr Davis by any authorities. What is reported here is the reflections of those involved, those making submissions, and my views about changes that may need to be made as a result.

I would like to express my appreciation to all those involved and thank you for this opportunity to shed some light and learn some lessons from the events from 28 October to 13 November 2024. I would especially like to thank the young complainant for the contribution he made.

TIMELINES

(a) the timeline during which material details of the allegations were received by Mr Rattenbury, Ms Davidson and the senior staff member given responsibility for conducting initial inquiries; and

(c) timeline of reporting information to the relevant authorities.

The following detailed timeline sets out two timeline elements of my terms of reference, namely the material details of when the allegations were received and when the allegations were reported.

In summary, the main timeframe over which the allegations were received spanned the period 27 October to 7 November 2023, with Mr Johnathan Davis resigning as an MLA on 12 November 2023:

- Ms Emma Davidson MLA first received rumours on 28 October, which she reported to the Greens Chief of Staff, Mr Guy Bromley, on 30 October. Neither of them reported these rumours to Mr Shane Rattenbury MLA.
- On 6 November, Mr Bromley and Ms Davidson advised Mr Davis of the rumours/allegations and he went immediately to inform Mr Rattenbury.
- On 6 November, Mr Rattenbury asked Mr Bromley to conduct a quick internal review to ascertain the substance of allegations against Mr Davis, with a report due on 10 November.
- Mr Bromley received serious allegations from one young complainant on 7 November and heard stories of more allegations. He informed Mr Rattenbury of those allegations on 7 November.
- Mr Davis stood down on 9 November and submitted his resignation from his MLA position to the Speaker and gave up his Greens Party membership on 12 November.

(a) Timelines in detail

Friday 27 October

Evening: A small group of Assembly staffers discussed rumours about Johnathan Davis MLA's possible sexual contact with people as young as 15-17. That was news to one of the Greens staff members present.

Saturday 28 October

Afternoon: On hearing the rumours for the first time, that Greens staff member spoke in person to Ms Emma Davidson MLA to advise her of possible illegality by Mr Davis. The staff member told Ms Davidson that they had heard rumours that Mr Davis had sex with young men, and possibly with a 15 year old.

Ms Davidson remembers the discussion as being told that "possibly the young person involved was 17 when it happened but is now older, or that there may have been someone aged 15 at some time in the past". Ms Davidson said that what she heard was "only rumours" of

inappropriate sexual contact and “not allegations” and they “were non-specific....without enough detail to know who was involved or whether it needed to be reported to police or other authorities”.

She told the staff member that if anyone was in contact with a young person who had a traumatic experience, they should know that they can report illegal behaviour to the police, and where to access trauma services. She said that the rumour should be reported to Mr Bromley.

Sunday 29 October

Ms Davidson was concerned about the welfare of the young person/people potentially involved and with that of her close friend, Mr Davis, who had an important position as MLA that he cherished and which he could lose if the rumours were true. She described their relationship to me as very good friends of eight years standing; “he was like my little brother”. Despite this, she told me that she had “no idea what he was doing” in terms of online dating with much younger people.

Ms Davidson told no one else of the rumours. She did not advise Mr Shane Rattenbury or the Government Leader, Mr Andrew Barr, of the rumours, nor did she discuss them with Mr Davis or take the rumours to the police as they were “non-specific” and “unsubstantiated”.

Her primary concern in hearing the rumours was to ensure that they were acted upon promptly and that the young person involved whose identity she did not know was informed of the trauma support services and their right to report criminal activity to police. Yet, Ms Davidson did not feel she was in a position to investigate the rumours herself because of her close relationship with Mr Davis and her commitments as a Minister. So, she arranged a meeting for the next business day (Monday) with Mr Guy Bromley, the Greens Executive Chief of Staff.

Mr Bromley holds the highest level of staff authority across all six Greens MLA offices (a practice unique to the Greens) and it is the Greens’ standard practice for him to receive and respond to important issues and complaints, including those regarding Greens Members and their staff. He performs a similar role to that of other chiefs of staff to many party leaders—as a bit of a “fixer”.

Monday 30 October

8am Ms Davidson accompanied the Greens staff member who advised her of the rumours and another Greens staff member also aware of the rumours to meet with Mr Bromley to enable him to hear the rumours and take appropriate action.

During the meeting, the Greens staff member told Mr Bromley about the rumours, namely that Mr Davis was alleged to have slept with people aged under 18 and possibly as young as 15, but that they had no evidence to prove it. This is the first time Mr Bromley had heard the rumours, although he was well aware that Mr Davis was an open and proud “sex positive” gay man on Grindr and other dating apps, “as were others working in the Assembly”.

But, “we could not act on rumour alone. We wanted to ensure that he received natural justice and that were the rumours to be baseless, he did not have his reputation tarnished or questioned.”¹

¹ Guy Bromley Report to the Leader of the ACT Greens: Internal review to understand complaints made about Johnathan Davis MLA, 10 November 2023.

Ms Davidson and Mr Bromley advised the two staff members that if they had any information suggesting that illegal activity with people under 16 or non-consensual sex had taken place, they should report it to the police. At this stage, neither staff member considered that they had such information. Nor did Mr Bromley or Ms Davidson. At this point in the meeting, the other Greens staff member declined to have any further involvement.

Mr Bromley told me that he regularly hears many, often baseless, rumours in the course of his job and at that time he was conscious of the need to test the veracity of the rumours before raising them with Mr Rattenbury. He told those at the meeting that he would investigate the rumours and asked the staffers to advise him of any people he should talk to who might be able to provide more information about the allegations.

Mr Bromley felt that he had an obligation to collect as much information as possible before advising Mr Rattenbury or others, including the police. Mr Bromley was aware that Mr Davis was absent interstate for the week and thought that if he was told about the rumours, he might attempt to contact potential witnesses or seek to destroy any online evidence while he was away. Mr Bromley was also concerned about Mr Davis's mental health and thought that the allegations from staff were historical and not a current risk. These factors played into Mr Bromley's decision not to raise the allegations with Mr Davis or with Mr Rattenbury while he attempted to investigate their truth. Mr Bromley did not speak to the police nor did he advise other Greens members.

5:30pm Mr Bromley and Ms Davidson met and agreed that it was important to preserve any potential evidence² and ensure that Mr Davis could hear the not yet substantiated accusations in person before they took the matter to the Greens Party Room. Ms Davidson told me that, rather than her reporting directly to Mr Rattenbury, she intended to take the matter to the Greens Party Room meeting, which was the usual way the Greens do their business—namely, they take decisions collectively.

30 October to 10 November period

During the week 30 October to 3 November, relevant Greens MLAs had other responsibilities, namely:

- Mr Davis attended the Australian Greens National Conference in Perth on the weekend of 28 and 29 October.
- Mr Davis flew to Brisbane on 30 October to attend a Commonwealth Parliamentary Association conference, substituting for Mr Braddock because Assembly business meant that Mr Braddock could not attend. These arrangements were prearranged and not engineered to accommodate the unfolding events.
- Ms Davidson attended the Disability Ministers Meeting in Melbourne for the NDIS Review on 2-3 November.
- Ms Davidson was in Perth on Ministerial business on 8-10 November.

² The significance is that the Grindr app (and possibly other apps), has a mechanism where contacts can be removed from the app at both the receiver and sender ends so that they don't have any record of the engagement. However, Grindr still has evidence on its server logs for 28 days thereafter, which police can access, even if messages are no longer visible to users who have blocked each other. Given that, it is more than likely that the police would have been able to intercept such communications once Mr Bromley made his report on 10 November 2023.

Mr Bromley sought more information about the rumours between 30 October and 6 November.

Friday 3 November

By the end of the week, it was apparent to Ms Davidson that Mr Bromley's review had gone nowhere because the young person potentially involved had "not been willing to make an allegation or confirm any facts relating to the rumour". This meant that they still didn't have a name, age, when the activity occurred, or what the activity was, which meant that they "still had no way of knowing if this needed a police report, report to the Clerk, or who else it should go to".

Sunday 5 November

6pm: Ms Davidson decided to report the rumour to the Greens Party Room meeting scheduled for the next day as a potential Code of Conduct breach, but she didn't want to do so without giving Mr Davis a heads up. She raised this with Mr Bromley then texted Mr Davis and asked him to meet her early the next morning on the pretext of catching up.

Monday 6 November

8:15am: Ms Davidson met with Mr Davis and asked him to accompany her to a meeting with Mr Bromley ostensibly to discuss a problem she was having.

8:40am: Mr Bromley, Ms Davidson and Mr Davis met. Mr Davis was told of the rumours in the meeting by Mr Bromley. Mr Bromley and Ms Davidson told Mr Davis to tell Mr Rattenbury, and tell the Greens Party Room at 10am that morning.

9am: Mr Davis told Mr Rattenbury that there had been serious allegations of a sexual nature made against him. He mentioned sexual relations with younger men and made reference to possible minors. Mr Rattenbury asked him if there was any substance to the rumours and asked a number of questions that went to the veracity of the rumours.

Mr Davis assured Mr Rattenbury that he had not done anything illegal and that the Grindr app he used to pick up people removed that possibility because Grindr only allowed people who were above 18 to use the site. Being unfamiliar with the app and not being familiar with the culture of people using the app, Mr Rattenbury did not think to ask Mr Davis whether younger people breached the rules to get onto the app or what age identification Grindr requires. Nor did he ask Mr Davis for access to his phone; had he done so, he may have seen for himself the nature of the online activities that Mr Davis was rumoured to have been engaged in.

10am: The matter was not raised at the Greens Party Room meeting because it was very sensitive and Mr Rattenbury had been surprised and somewhat taken aback by the allegations and wanted to think about how to handle the situation.

Over the course of the day: Between commitments, Mr Rattenbury had short conversations with Ms Davidson and Mr Bromley, and it was apparent to him that there were different versions and emphases between them and Mr Davis about the matter, and that Ms Davidson and Mr Bromley had different perspectives. Their account was significantly more concerning than the account given to him by Mr Davis.

However, like the others, Mr Rattenbury was afraid that there was no clarity as to whether or not illegal activities had occurred and insufficient information to enable him to act against Mr Davis. "At first flush it appeared from what Mr Davis had said that it didn't involve criminal conduct, but I wanted it looked at more closely." The significant discrepancy in their accounts and the

potentially serious nature of the rumours relayed to him by Ms Davidson and Mr Bromley was the basis for his decision to have an internal review.

Shortly thereafter, Mr Rattenbury asked Mr Bromley to conduct an internal review to “find out what we were dealing with” and “do it quickly”. In particular, Mr Rattenbury asked for clarity about the accusations and that the review be concluded urgently, within four days (namely by Friday 10 November). He said that legal issues needed to be checked with officials as relevant.

Mr Rattenbury’s involvement and decision to undertake the internal review facilitated staff action to locate young people who might be prepared to speak to Mr Bromley.

Tuesday 7 November

Mr Davis was absent from the Legislative Assembly for the next few days, with no explanation.

Following up Mr Bromley’s request for more information, a junior Greens staff member approached a young person who was initially very apprehensive about a meeting but was eventually willing to speak to Mr Bromley to tell his story, on the basis that his identity, photos and other identifying material be kept private and not be provided to the police under any circumstance. After another discussion with the (other) Greens staff member who actually reported the rumours to Ms Davidson, it was agreed that the young person would meet with Mr Bromley at the university later that day at a venue chosen by the Greens staff member, and that he would be supported at the meeting by the Greens staff member.

2:30pm: Mr Bromley, the Greens staff member, and the young complainant met at the venue organized by the Greens staff member. To protect the complainant’s privacy, I only outline the key elements here.

Mr Bromley thanked the young complainant for coming forward and provided the assurances the complainant sought about the protection of his privacy and that his story and identity would not be provided to the police to avoid a police interrogation or public investigation per the complainant’s wishes.

The complainant explained to Mr Bromley that in agreeing to come forward, he wanted to see an internal review or external investigation (not involving the police), with consideration being given to whether Mr Davis’s actions were an abuse of power. As he later retold it to me, he said his motivation in agreeing to the meeting was to stop any potential misuse of power by Mr Davis, who he described as “very persistent” and “using coercive behaviour”, which was inappropriate for a Member of the Legislative Assembly.

The complainant provided Mr Bromley with a lot of information and evidence about his consensual encounters with Mr Davis while he was 16 and 17 (although Mr Bromley recalls mention of age 17 only). These encounters were arranged on a number of apps—Tinder, Snapchat, text messages, Grindr, Instagram, Hinge, Twitter. He said that Mr Davis knew he was under 18 and that he persistently pursued him for sex and that he solicited nude photos from him³. He alleged that Mr Davis had had sexual relations with other young men arranged through

³ The young complainant subsequently explained to me that he and Mr Davis were not and had never been in an ongoing relationship.

various platforms and other means; some under 16. The allegations were of a very serious nature.

The complainant expressed concern to me that, amongst other things, Mr Davis had blocked him and others on dating platforms on 6 November, removing most records of their engagements except where those concerned had taken screen shots of some of their messages, as he had done. He told me that he suspected that Mr Davis had been tipped off by Mr Rattenbury and that this led to the records being removed, but I am satisfied that this was not the case, because Mr Bromley and Ms Davidson relayed the allegations to Mr Davis and Mr Rattenbury was unaware of the “deletion” options available to Grindr users. The removal of records that I understand took place was initiated by Mr Davis after his meetings with Ms Davidson and Mr Bromley, and with Mr Rattenbury, unbeknown to them.

Over the course of the meeting, the complainant became increasingly concerned. He was uncomfortable about the public nature of the place where they were sitting (very close to other students on nearby tables) and how Mr Bromley “asked me very vulnerable questions such as to specify the type of nude photos I had sent Mr Davis...and about Grindr features—in very explicit detail. Not being quiet as people next to us stared at me”. Mr Bromley explained to me that he had mistakenly understood that this meeting place was the complainant’s choice, and that he wanted to ask clarifying questions about detail that was readily provided by the complainant.

The young complainant found Mr Bromley to be abrasive and interrogating during the meeting and said that he traumatized him as much as a police investigation. He alleged that Mr Bromley was more concerned for Mr Davis and the Greens Party than for vulnerable young people. Mr Bromley acknowledged to me that there had been a power difference at the meeting and said that he tried to keep the tone reasonable, asking open questions and doing so calmly, albeit that he accepted that he did ask a lot of the young person in pursuit of information. The other Greens staff member at the meeting did not regard Mr Bromley’s approach as abrasive, but agreed that the young complainant felt intimidated (“he was being questioned by a powerful political staffer”) and was concerned about him.

Despite his concerns, the young complainant and Mr Bromley agreed to keep in touch and they liaised with each other over the course of the next few days.

That evening: Ms Davidson and Mr Davis also kept in contact as they were friends and she was worried about him. She suggested to Mr Davis that in the circumstances he should ensure that he had friends and family around him, and should consider his options post being an MLA should it come to that, which she saw as a positive means to avoid him self-harming.

Wednesday 8 November

Mr Bromley provided Mr Rattenbury with an update on the meeting with the complainant, but omitted personal identification details, as requested by the complainant. By this time, the story was starting to emerge, but neither was ready to make a judgement.

One Greens staff member wrongly challenged another about spreading rumours about Mr Davis and ruining his career. This wrong-footed confrontation spread “like wildfire” among staffers.

Thursday 9 November

11:45am: A senior Greens staff member accompanied Mr Davis’s staff, who had by this time heard the rumours and were confronted by them, to see Mr Rattenbury. Mr Rattenbury

explained the situation and said that Mr Davis was receiving support while the investigation was underway.

Early afternoon: The Greens Party Room (absent Ms Davidson who was in Perth) was briefed on the nature of the allegations, the steps taken, the information gathered to that point, and the intended timeline and approach once Mr Bromley had completed his report. The Greens Party Room did not direct Mr Bromley to advise the police.

Mr Rattenbury told me that he was dismayed that an issue that he had thought was being tightly held to protect those involved, appeared by then to be known more widely. He then asked Mr Bromley to convene a meeting with the staff members knowingly involved so that he might reassure them that the allegations were being taken seriously in an internal review initiated by him that would be finalized by the end of the week.

3pm: Staff meeting between Mr Rattenbury, Mr Bromley and Greens staff members with some knowledge of the rumours and allegations, including Mr Davis's staff who were concerned about his welfare and the nature of the allegations. In a challenging and somewhat mismanaged conversation, Mr Bromley and Mr Rattenbury were reluctant to pass judgement based on Mr Davis's positive sexuality and referenced the range of sexual behaviour that people engaged in. Outraged, the Greens staff present expressed frustration and asked "why isn't he gone already"; telling Mr Rattenbury to sack Mr Davis. Neither Mr Rattenbury nor Mr Bromley responded in the meeting in the affirmative to the staff members' pleas, but their depth of feeling left a deep impression on Mr Rattenbury.

Mr Rattenbury was told after the meeting by a staff member that some of the Green's staff had known for about six months that there were allegations circulating at the ANU about Mr Davis's interest in very young men, and that they (incorrectly) thought that Mr Rattenbury and Mr Bromley would've also been aware of the allegations.

After the meeting: Mr Rattenbury and Mr Bromley considered the situation. Mr Bromley was concerned about fair process and possible defamation, and suggested to Mr Rattenbury that Mr Davis should stand down while he sought the facts and finalized his review.

While having been concerned previously that there needed to be due process, Mr Rattenbury was now convinced that Mr Davis needed to stand down, except that Mr Davis was an elected representative and the channels to enable a standdown were unclear. Mr Rattenbury decided to use what he described euphemistically as "his reserve powers as leader", which would enable him to assert his moral authority and get Mr Davis to stand down that evening. Mr Rattenbury said that would mean that Mr Davis would have no MLA responsibilities, no public duties and not return to his Assembly office until further notice.

Early evening: Some Greens staff members met for drinks and invited the young complainant to join them, so they could provide him with support. He joined them for the evening.

8pm: Mr Rattenbury and Mr Bromley visited Mr Davis with the intention that he be relieved of his duties until further notice. They sought information from Mr Davis about the allegations, but didn't receive it. Mr Davis's mental health and personal safety were a concern, but it was clear to them that Mr Davis understood the gravity of the situation.

Mr Rattenbury told Mr Davis that “he was being stood down, the effect of which was that Mr Davis should continue to stay away from the Assembly and not undertake any duties in his role as a Greens MLA”⁴. He agreed.

9:25pm : The Canberra Times contacted the Greens Communications Directors in Mr Rattenbury’s office and asked for comment on a story about Mr Davis. They immediately called Mr Rattenbury, which was just as he and Mr Bromley were leaving Mr Davis’s home, so Mr Davis was then aware that the media had been informed.

9:45pm: Phone hookup between Mr Rattenbury, Mr Bromley and two advisers from Mr Rattenbury’s office who were then appraised in some detail of the situation they were dealing with. They discussed what was to be done.

The adviser liaising with the Canberra Times asked the journalist for more time in order to be able to put support in place for staff, including informing them directly and establishing dedicated Employee Assistance Program support. The Canberra Times was determined that the story would be released late morning the next day (Friday), which happened to be before Mr Bromley’s report was due to be finalized. After that discussion, the advisers suggested that Mr Rattenbury release a short holding statement for journalists, pending the finalization of Mr Bromley’s review, and offer to provide a fuller statement and briefing a few days thereafter.

A Greens Party Room meeting was organized for the next day that was to also include the two Communications Directors.

The Communications Directors then focused on an email for Mr Rattenbury to send to staff advising them of the situation. They established dedicated Employee Assistance Program support for staff. An all-staff meeting was organized for the next day.

They considered who was to be told, including the Chief Minister, the Speaker and the Clerk of the Assembly, but it was already late at night, so they decided to contact them the next day.

Friday 10 November

6:56am: Mr Bromley made text contact with the Chief Minister’s Chief of Staff and the Acting Chief Minister’s Chief of Staff asking to speak with them.

7:15-7:30am: Mr Bromley reported to the Chief Minister’s Office as part of the Parliamentary and Governing Agreement “no surprises” policy and provided a broad overview of what was alleged. In the conversation between Mr Bromley and Chief Minister’s Chief of Staff, Mr Bromley told them that he intended to make a report to the police about the allegations that morning. This conversation triggered a number of calls between the Chief Minister’s Chief of Staff, the soon to be Acting Chief Minister’s Chief of Staff, the Acting Chief Minister and Mr Bromley.

7:35am: Mr Rattenbury texted the Chief Minister, Mr Andrew Barr MLA, who was commencing leave, seeking a suitable time for a conversation. No doubt, the Chief Minister was being advised by the Chief Minister’s Chief of Staff and/or the soon to be Acting Chief Minister’s Chief of Staff, and/or the Acting Chief Minister of the issue at hand.

8:15am: The Chief Minister called Mr Rattenbury and was advised formally of the situation by Mr Rattenbury in line with his obligations under the Parliamentary and Governing Agreement.

⁴ Submission from the Greens to this inquiry.

The Chief Minister received the news calmly, noted what was being done to manage the situation, and did not direct Mr Rattenbury as to how it should be handled.

8am: While all of this was going on and in line with an agreement reached with Mr Rattenbury the night before, Mr Bromley returned to Mr Davis's house for a welfare check and to ensure that he got to the doctor and had the support he needed in view of the press coverage anticipated that day.

Simultaneously at 8am: The Greens Party Room met and agreed that Mr Rattenbury's advice that Mr Davis should "stand down" from his MLA duties was appropriate, which in effect meant that he would not engage in any public duties and not return to his office until further notice. They directed that the rumours and now allegations should be reported to the police. The Greens Party Room also committed to fulfilling all their reporting requirements as swiftly as possible.

10-10:50am: Mr Bromley did not attend the Party Room meeting and went to see ACT Policing to report the young complainant's allegations because he was concerned about the content of the information, that he did not feel capable to appropriately investigate the allegations, and there was a possibility that something might come out subsequently about illegal activity, so he wanted these particular allegations to be on the police record.

Mr Bromley made the report even though the complainant had emphasized it was a consensual relationship which he didn't want reported to the police.

Versions of what happened next differ. Prior to sharing any of the complainant's personal information with the police, Mr Bromley messaged the complainant to let him know that a story about Mr Davis would be in the Canberra Times that morning and "as a workplace we feel obligated to report this to the police because we feel that we don't have the tools to deal with this appropriately". He encouraged the complainant to seek support from various victim support agencies, which he provided to the complainant. Up until this time, the complainant had not received any victim support ostensibly because he was not an employee.

Whereas, the young complainant says that Mr Bromley failed to tell him beforehand that he was going to the police, and ignored his clear specification in coming forward that his allegations not be reported to the police. I understand that what actually happened was that Mr Bromley sent him the text message at 10:17am while he was waiting at the police station, but the complainant did not receive the message until a couple of hours later due to his inability to use his phone while working. This meant that he was unable to again press his views about his privacy.

In any event, I understand that Mr Bromley also told the police that the young complainant under no circumstances wanted his details shared, and asked them whether it was his obligation to share and they encouraged him to do so on the basis that they would talk sensitively to the young person later. Mr Bromley let the police know that the complainant was 17 at the time of his first interaction with Mr Davis, though through investigation in this report, Mr Bromley has come to learn he was 16. Hearing of the complainant's age, the police said that he was obliged to make a report and that they would offer the complainant EAP support. In short, Mr Bromley felt that he "didn't have a choice"; he had to report.

10:04am: The Director of the Government Communications Unit was provided with a copy of the ACT Greens Statement that they provided to the media that morning. That statement said:

"A number of complaints were brought to my attention at the beginning of the week.

I immediately asked a member of my senior staff to investigate these complaints, and I have stood Johnathan down indefinitely while that work continues.

We do not have any evidence of illegal activity, but if there has been I encourage those people to contact the police.

Out of respect for the privacy of everyone involved in this matter, I will not be commenting any further at this time.”

10:05am: The Greens Whip, Mr Braddock MLA, provided the Acting Clerk of the Assembly with an overview of the allegations against Mr Davis, sought advice about certain support for staff and the making of Code of Conduct complaints.

10:27am: The Canberra Times published its first story.

10:48am: Mr Rattenbury went to the Acting Chief Minister’s office looking for her and, in her absence, offered to speak with her over the phone.

11:43am: The Acting Chief Minister, Ms Yvette Berry MLA, called Mr Rattenbury and was advised of the situation.

Late that morning: The young complainant received three missed calls from an unknown number. When he called back, he was alarmed that he was speaking to the police, who were following up the report from Mr Bromley. He told them that he didn’t ask for this and hung up. Hours later, he received another call from a different police officer. They discussed how he had not wanted a report to be made to them and asked to be removed from their files along with any personal information he had provided to Mr Bromley that Mr Bromley may have subsequently provided to the police, against the complainant’s wishes. When he asked how much of his information was on the police system, the officer refused to confirm what they had unless he came into the station. The complainant declined to do so and asked not to be contacted further by the police.

After that, the complainant messaged Mr Bromley and the Greens staff member who met with him to ask why his details were given to the police. They failed to respond.

10:58am: The Greens Whip, Mr Andrew Braddock MLA, wrote to the Clerk of the Assembly (who holds responsibility for reporting to the Commissioner for Standards), advising him that in accordance with continuing resolution 5AA(5) the Greens Party Room had decided it appropriate to refer allegations against Mr Davis to the Commissioner for Standards, and that the Greens were ready to co-operate with any inquiry that the Commissioner may wish to undertake. The Clerk referred the matter to the Commissioner that day.

11:20am: Text messages were exchanged between the Speaker and Mr Braddock about the Canberra Times article.

Over the course of the day: The Chief Minister, the Deputy Chief Minister and the Leader of the Opposition called on Mr Davis to resign, based on the allegations reported in the Canberra Times.

12:54pm: The Speaker emailed Mr Braddock to let him know that Mr Davis would be removed from the Speaker’s roster.

1:45pm: The Acting Clerk emailed Mr Braddock in respect of Mr Davis’s staff.

1:59pm: The Acting Clerk emailed all Assembly building occupants regarding respect in the workplace and the supports available to them.

4:49pm: The Greens reported by email to the Commissioner for Standards advising of the allegations: “The allegations are that [Mr Davis] engaged in sexual activity with a young person or young persons that may constitute criminal behaviour. There may be other matters involving criminal offences, such as the sharing of explicit material. There may be matters that warrant dismissal. We do not know the full details”. They advised the Commissioner that the allegations had been reported to the police. That report was delayed because it was a report on behalf of all five remaining ACT Greens MLAs and the ACT Greens Chief of Staff, all of whom needed to agree to it.

5:07pm: The Acting Clerk provided the Speaker advice regarding the reportable conduct scheme.

Saturday 11 November

5pm: Mr Rattenbury and others attempted to contact Mr Davis over the course of the day, but he failed to respond until his lawyer called Mr Rattenbury and Ms Davidson. Ms Davidson was told by the lawyer that Mr Davis was now taking advice from the lawyer, and that he would meet with Mr Rattenbury and others on Sunday afternoon.

Sunday 12 November

4pm: In a meeting that included Mr Rattenbury, Ms Davidson and Mr Bromley, the lawyer and members of Mr Davis’s family, it was apparent from the outset that Mr Davis had decided to resign. He made it clear that he couldn’t come back from this politically, having been mortified and humiliated by the press coverage. Mr Rattenbury supported this decision.

They then discussed the logistics of Mr Davis’s decision—namely the timing, preparation of his resignation letter, and so on.

Early evening: Mr Rattenbury, Ms Davidson and Mr Bromley met not long after and discussed handling arrangements for his resignation the next day. Mr Rattenbury called the Acting Chief Minister and advised her. Between them they called all Greens MLAs and Mr Davis’s staff and let them know what to expect the next day, and asked the MLAs to let all of their staff know personally.

8:08pm: The Speaker received Mr Davis’s resignation from the Assembly, which said “I hereby tender my resignation as a member for Brindabella from the ACT Legislative Assembly. I understand that it will be effective immediately...”

8:45pm: The Canberra Times released a story saying that Mr Davis would resign.

Monday 13 November

9:46am: Mr Bromley messaged the complainant and repeated his offer of support. He let the complainant know that his internal review report would be released that day, offered to send him the report, and assured him that his anonymity was protected. The report was provided to the complainant.

9:47am: The Speaker was questioned about the allegations before the Standing Committee on Public Accounts in its annual report hearings.

11am-12pm: Mr Rattenbury released a media statement announcing Mr Davis’s resignation, released the internal report prepared for him by Mr Bromley, and took questions from the press.

12:41pm: The Greens made a report to the ACT Integrity Commissioner, attaching the statement from Mr Rattenbury and the report prepared by Mr Bromley.

12:52pm: The Greens made a report to ACT Ombudsman and were subsequently advised by the Ombudsman at 4:04pm that day that the allegations made against Mr Davis did not need to be reported under the ACT's Reportable Conduct Scheme because an MLA is not a designated entity for the purposes of the scheme.

3:41pm: Mr Braddock emailed the Acting Clerk and provided him with a copy of Mr Rattenbury's statement and Mr Bromley's report for referral to the Commissioner for Standards.

6:23pm: The Greens made a report to the Speaker under the Child Safety Code of Conduct and Policy.

6:34pm: The young complainant was upset that he was not given the opportunity to comment on the report Mr Bromley provided to the Greens Leader. During the day, the complainant expressed concerns to Mr Bromley about how his story had been represented in Mr Bromley's report—which he described as “craftily drafted”—believing that it lessened the impression he gave about the impact Mr Davis's action were having on himself and others. Mr Bromley messaged the complainant and explained that the Greens did not have the skills internally to investigate his complaints so took a decision to refer the complaints to the police. He also explained that the report “was never meant to be a fulsome recount of everything you detailed to me, but sufficient enough to inform the Party Leader to determine the next steps”.

Following the announcement on 13 November: Four other people contacted the Greens with information about Mr Davis that they wished to share, including one from a person who said they were 15 at the time. All were followed up and provided with sources of support, including where appropriate offers to meet with the Victims of Crime Commissioner. Reports were made to ACT Policing, the Speaker, the Clerk and the Integrity Commissioner about the 15 year old.

Tuesday 14 November

8:43am: Mr Braddock emailed the Speaker to provide her with copies of Mr Rattenbury's statement, Mr Bromley's report and emails sent to relevant agencies advising them of the situation.

Finally: There has been conjecture throughout this review that the Greens leadership should have been aware of Mr Davis's potentially illegal engagement with young men because it was said to be common knowledge at the ANU and among Assembly staff and so commonly known that other political parties had prepared draft press releases in preparation for his fall. It is certainly the case that Mr Davis was known to be sex positive, but I have not been able to find evidence that his alleged activities with young people aged under 18 were known by senior party leaders of any political party, and I have been assured that draft press releases were not prepared by either the Labor or the Opposition parties.

(b) Appropriateness of actions taken by Greens Ministers

The appropriateness of the steps taken by Mr Rattenbury and Ms Davidson in relation to the handling of the allegations and having regard to applicable laws, good governance, compliance with available policies, and community expectations.

The emerging environment

Politicians' lives have always been public, but until recently their "public life" did not necessarily spill over into the bedroom. The "Me Too" Movement and scandals in various countries, including in our own national Parliament, have changed all that. Politicians' behaviour privately is increasingly subject to intense scrutiny as is their character—along with the privilege of being in parliament, increasingly comes the responsibility of being in office. Judgements are now being made about their probity and integrity as much by their dealings outside their primary place of work as inside it. It is challenging for everyone, and it should come as no surprise that parliaments everywhere are struggling to keep on top of this dynamic and evolving environment.

Meanwhile, we as a country have moved significantly in terms of the respect and value accorded gay culture. Legalisation for equal marriage, acceptance of gay couples with significant age differences, coupled with the proliferation in the use of dating apps and normalisation of casual sex within the wider community, have engendered greater understanding between the gay community and others and increased tolerance.

By no means have these changes come easily or without continuing stress and challenges for those concerned, especially as they grow up and reach adulthood. Many young people are unaware of their rights or still fearful that their sexual preferences will not be accepted in their families or within the wider community. They do not want to be confronted with the somewhat intimidating legal justice system, and all it means for their relationships, education and careers, because of the associated public exposure and potentially adverse press coverage for them, merely for being who they are. Even though assumptions aren't automatically made any more about people's motivations and actions based on their sexuality, others fear being charged for exchanging material under age 18 and still fear accusations of paedophilia by association with their sexuality or their young use of dating apps.

At the same time, exposure of institutionalised sexual abuse of children and young people has seen community attitudes harden and abusive practices once hidden or ignored now earmarked as inappropriate and unacceptable. Laws have been developed, strengthened and more widely enforced. The new laws now provide the benchmarks to which we must all conform and operate.

It is therefore important that those benchmarks are as clear as possible, recognising that there will always be issues between what is appropriate for someone under 16, where that is the age of consent, and in the years 16 to a person's 18th birthday where a young Australian comes of age nationwide.

The rules and the investigation

In the ACT, the law is unambiguous that sex and sexual touching with a person under 16 is illegal as is coercive sex of any kind or procuring or grooming a child under 16 for unlawful sexual activity⁵.

Additionally, even though age 16 is the age of consent in the ACT, those aged 16 and 17 are prevented legally from using telecommunications carriage services for exchanging illicit messages of a sexual nature or eliciting sex under Commonwealth law⁶—that means under both the laws of the ACT and the Commonwealth the exchange, possession, or communication of such images depicting a person under 18 is illegal. Under Commonwealth law, this type of material is characterised as “child abuse material” whereas in the ACT it is considered “child exploitation” material.

A person who engages in sexual activity with a person under 16 or exchanges sexual images of a person under 18 is therefore likely to have committed an offence under ACT and Commonwealth law. A person aged between 16 and 17 will potentially have committed an offence⁷ by using a device to exchange, store and communicate messages of a sexual nature depicting or representing a person under 18, notwithstanding that the age of consent for sexual intercourse in the ACT is 16.

The reasons for these laws are clear—it is a matter of the safety and protection of vulnerable children and young people. That consideration should always be paramount.

But, in this case, reporting was delayed due to the Green’s initial focus on issues of legality for ages under 16—namely ascertaining if the rumours had validity and were related to underage sex or messages of a sexually explicit nature involving people aged under 16—rather than on the legality for both sexual activity under 16 and the legal age for lawful transmission of sexual images of 18.

A number of policies, codes and guidelines stem in one way or another from the laws applying in the ACT. One of them is the obligation in Section 66AA of *the Crimes Act* that specifies that any adult who “reasonably believes” that a sexual offence has been committed against a child (that is, someone aged 0-15 years) is required to make a report to the police.

This provision enables some wriggle room for those receiving rumours, allegations or complaints to look into them themselves. In this situation, the provision effectively provided an avenue for the testing of the so-called rumours by Mr Bromley and then the internal review of the rumours that Mr Rattenbury commissioned a week after the initial rumours were aired before a possible approach to the police if the rumours were found to have substance and criminal activity was potentially involved.

It is in this context I note that Ms Davidson characterised the original allegations made against Mr Davis as “only rumours” of inappropriate sexual contact and “not allegations”, and made the point that the rumours “were non-specific....without enough detail to know who was involved or whether they needed to be reported to police or other authorities”.

Seeing the allegations initially as “rumours” and a “HR matter” and then a week later as a “Code of Conduct issue” for the Greens Party Room, Ms Davidson reported “the rumours” to the Greens Executive Chief of Staff responsible for HR, Mr Bromley, instead of to the police as she says she would have done if clear evidence of sexual grooming or activity with a child under 16 was available.

⁵ Various subsections of the section 66 of the Crimes Act 1900.

⁶ Nevertheless, I understand that it is not unusual for these laws to be broken by young people exploring their sexuality consensually with others.

⁷ Against either or both the Criminal Code and the Crimes Act.

As a Minister of the Government, it is surprising that she did not report the rumours to her party leader, Mr Rattenbury, and to the Chief Minister in his capacity as government leader because this was potentially a very serious matter.

This approach to Mr Bromley by Ms Davidson was questioned in submissions to this review, with the submission from Ms Lee MLA arguing that that “it defies logic that a Minister of the Assembly thought it appropriate to report the conduct of an elected Member to a member of staff to investigate”. Similarly, the submission from the ACT Labor Caucus criticized the Greens’ action at some length:

“The legal obligations under Territory law to report allegations of child sexual abuse are clear.....any adult who reasonably believes that a sexual offence has been committed against a child must report it to the police....

Depending on the nature of the contact and disclosure, MLAs and staff may need to make referrals to the police; the Integrity Commissioner; the Speaker; and the Ombudsman (as a public interest disclosure)....

If the complaint is about the conduct of an MLA, a complaint can be made to the Commissioner for Standards via the Clerk of the Legislative Assembly as per continuing resolution 5AA.”

Nonetheless, in so doing, Ms Davidson encouraged investigation by Mr Bromley to ascertain if the “rumours” were valid and that they obtained sufficient facts to enable reporting to the appropriate authorities in a trauma informed way, depending on whether it was a Code of Conduct breach, illegal behaviour or something else. Ms Davidson is confident that her judgement was right, as only a few days later, on 8 November, she had reason to report another matter to the police. In that case, she had the name of the person, the details of the violence being threatened, and other information, but was told by the police to call back “when I had something serious to report”.

Mr Bromley was accustomed to hearing numerous rumours which were often unfounded and was concerned to ensure that Mr Davis was given procedural fairness. They may have assumed that any politician would have enough common sense and maturity to not engage sexually with people under 18 years of age, but their focus then was not necessarily on whether the rumoured behaviour was morally and ethically proper for an MLA. Rather, Ms Davidson and Mr Bromley were worried about the consequences for Mr Davis’s career and the Greens and the potential that this was merely old gossip about Mr Davis’s “sex positive” sexual practices.

Mr Bromley pointed me to the words of Hugh Tomlinson KC, a British privacy lawyer⁸:

“A false allegation of paedophilia is so serious it could lead to someone having a mental breakdown, become the subject of vigilante attacks or even committing suicide...Victims should be going to the police and other people should not be making accusations simply on the basis of rumour.”

Mr Bromley is a relatively new arrival from the UK and may not have appreciated the need to consider the interactions between Commonwealth as well as ACT law. We can’t blame him for that. In fact, Mr Bromley advised me that he drew upon the Legal Aid ACT site “Is Sexting a Crime?”, which left him with the impression that “sexting” was illegal in the ACT only if those concerned were under

⁸ Hugh Tomlinson, quoted by Rowena Mason in an online article, Social Media users warned about falsely calling politicians paedophiles, 8 July 2014.

16. He has since learnt that Commonwealth (and ACT) law prohibits such exchanges up to age 18. He said that had he understood that Commonwealth laws takes precedence over State and Territory law, he would have reported the rumours to the police as they would evidently have been an indication of unlawful sexual activity and transmission.

Ms Davidson's actions can be explained by her experience in the way the Speaker appeared to have treated another police matter affecting her personally⁹; her view that the Speaker's office is not a non-political office; by her declaration that the suggestions that Mr Davis was engaging in inappropriate behaviour with young people between 15 and 17 were rumours and unspecific which she had heard second hand; and by her concern that she had a conflict of interest because of her close personal relationship with Mr Davis. However, Ms Davidson should have taken advice and reported what she had heard to Mr Rattenbury and to the Chief Minister as a basis for possible reporting to the police and the Speaker, as the rumours potentially involved a 15 year old.

In saying this, I am conscious that Mr Bromley says he subsequently received advice from the ACT Government Solicitor that he did not have a mandatory reporting obligation and, by implication, neither did Ms Davidson, or Mr Rattenbury, when he was advised eventually of the situation by Mr Davis. But as an operational rule, it is always good practice to report potential illegal sexual activity involving children and young people under 18 to the police and let them investigate, irrespective of whether or not the information received is at first glance just a rumour.

In any event, I assume that this advice from the Government Solicitor was based on the age (over 16) of the young complainant at the time he had sexual relations with Mr Davis and not about the exchange between the ages of 16 and 17 of sexually explicit device content. I note that ACT Policing in an email to Mr Bromley advised him that "mandatory reporting obligations for sexual offending only relates to children, not adults as per s66AA Crimes Act 1900". There is therefore evident confusion about what is illegal and what is not because different parameters can come into play with different cases or issues.

ACT Policing also explained in that email "the victim centric approach" that ACT Policing must adhere to for sexual assault allegations, which in effect means that the onus is on the victim to report directly to police or to seek support services such as the Canberra Rape Crisis Centre. In this case, the young complainant refused to make a report to the police for various reasons—ranging from a fear of police investigatory techniques to fear of defamation to a genuine concern about the possibility that he could be charged for using a telecommunications device to share images—nor did he report to the Canberra Rape Crisis Centre because their sexual relations had been consensual.

As Mr Bromley subsequently came to realize, damage can be done if investigations of this nature are not handled sensitively and carefully, and I note that the young complainant advised me that he suffered as a result. The young complainant was advised by Mr Bromley of the various community support services available while Mr Bromley was at the police station. That was too late. The complainant should have been offered support at the time of his interview with Mr Bromley and should have been let know further in advance that his allegations would be reported to the police.

The Social Work Department of the University of Buffalo, Canada has prepared a helpful suite of principles to guide trauma informed care—safety, choice, collaboration, trustworthiness and empowerment. In terms of Mr Bromley's practice, the relevant elements are "...privacy is respected", "individuals are provided a clear and appropriate message about their rights and

⁹ Both offices have since dealt with this issue, which related to a misunderstanding about the nature and urgency of the issue and a failure to communicate effectively.

responsibilities” and “respectful and professional boundaries are maintained”¹⁰. Suffice it say, despite their apparent attempts to be sensitive and considered, the young complainant did not receive trauma informed care from the Greens.

As occurred here, it is often the case that young people do not want their circumstances reported to the police and have the right to reject police involvement. However, the reality is that trauma informed measures do not diminish a Minister’s or other adult’s responsibility to go to the police if sexual illegality in relation to children and vulnerable young people is suspected. Those receiving allegations need to sensitively let the complainant know that, as specified in section 8.34 of the Child Safety Code of Conduct and Policy and due to legislative requirements, they cannot provide an assurance of absolute confidentiality and that they have an obligation to report to the police and others, so the child or young person is aware of their obligations before proceeding. In all cases, the responsible adult involved should facilitate support for the young person concerned in what will invariably be a torrid and frightening experience for them.

From my reading, while it took some time for them to make reports, the actions of the Greens were largely in line with the Legislative Assembly’s Child Safety Code of Conduct and Policy¹¹, with one notable exception. Section 8.35 of the Child Safety Code of Conduct and Policy requires that a complaint about an MLA must be referred to the Speaker. The Speaker was only advised formally of the complaint when the Greens made a report to her on 13 November after Mr Davis had resigned, although Mr Braddock and the Speaker exchanged text messages immediately after the first Canberra Times article appeared. Significantly, no other MLAs made reports to the Speaker after the matter became public. The Greens also failed to take advantage of the politically impartial advice and support available to them by way of the Clerk and the Ethics and Integrity Adviser until 10 November as the story broke.

Mr Rattenbury and Mr Bromley advised me that they didn’t report the allegations received on 7 November to the Speaker or seek advice from the Clerk because it did not occur to them to do so. The Greens maintain that they did what they argue any other political party would have done in the circumstances, namely they dealt with the allegations as a “party matter not a parliamentary matter”. Mr Rattenbury saw the rumours and then allegations against Mr Davis as “our problem, that we needed to think about and deal with because we are the people first and primarily with responsibility for it”. That meant that he asked the Greens Chief of Staff to look into the rumours urgently and provide clarity about whether illegality was involved and if a report needed to be made to the police.

The issue here hangs on whether the Greens reasonably believed that Mr Davis had been involved in unlawful criminal activity and whether they wilfully and improperly withheld information from authorities about the rumours and allegations against Mr Davis. Their explanations to me suggest that they were so surprised by the rumours/allegations that they decided to look into them to test their veracity and, only when they found sufficient evidence to convince them that potential criminality may be involved, did they report Mr Davis to authorities.

On the balance of probabilities, I don’t think the Greens wilfully or improperly withheld that information. But, I do think they were mistaken in assuming that they were in a position to investigate the rumours/allegations. I would go so far as to say that, in hindsight, Mr Bromley should

¹⁰ The School of Social Work, University of Buffalo, “What is Trauma-Informed Care?”, available online.

¹¹ ACT Greens Submission, Table A.

not have met with the young complainant at all and, even with his doubts and concerns about unsubstantiated rumours, he should have reported to the police immediately.

This is because investigations that are criminal or potentially criminal in nature are complex and difficult and are rightly the responsibility of the police. In my judgement, the Greens should have gone to the police as soon as they were advised of the rumours, and definitely when Mr Bromley received the allegations from the young complainant, which involved potentially criminal activity.

The ACT Legislative Assembly has a series of codes of conduct—for Ministers, Members, and their staff—that spell out among other things ethical principles for Ministers. I doubt that either Ms Davidson or Mr Rattenbury has breached the Ministerial Code of Conduct because they acted when advised of the rumours and allegations and ensured that they were followed up diligently and fairly quickly, then acted upon. Ultimately, however, that is a matter for the Chief Minister to determine in respect of his Ministers. Similarly, I doubt that Mr Bromley has a case to answer because he acted consistently with the “reasonably believe” wording of the Crimes Act.

The governance arrangements within the Greens Party are highly consultative and decisions are taken on a consensual basis, with regular meetings of the Greens Party Room being the primary decision-making body. The ACT Greens internal MLA Standards of Conduct and Operating Procedures of March 2023 imparts that “[c]onstructive critique of MLA performance should be raised directly with a colleague in the first instance”. This provision has proven to be unsatisfactory in this case and would be in any other potentially criminal case involving the collection of evidence. There is a mountain of difference between performance management and potential illegality, which needs to be addressed through other means.

As a result of this situation, the Greens will need to amend their internal governance practices and establish a funnel for important issues about an MLA’s conduct to be raised directly with the Greens Leader and/or the Chief Minister (for Ministers) and other authorities so they are acted upon appropriately.

In the course of this review, several people have raised the issue of whether it was even possible for Mr Rattenbury to ask Mr Davis to stand down. I believe that Mr Rattenbury was fully aware that there were only limited means by which elected Members of the Assembly can lose their positions and that they cannot be terminated by the party leader. This was why Mr Rattenbury used his only option as he saw it to deal with the situation, which was to use his “moral authority” to effectively get Mr Davis to stand down. “I knew he needed to be suspended from duties, but I understand that no one has direct power to do that to an MLA. This is where in my capacity as Party Leader, I needed to take the actions I could.”

According to the Speaker, because Mr Davis was still an elected Member, he in fact retained access to his office and Assembly facilities until he provided his formal resignation to the Speaker on 12 November.

The wash up

As to the responsiveness of the Greens to the young complainant’s wishes to have an internal review or external investigation with consideration being given to whether Mr Davis’s actions were an abuse of power, I am satisfied that Mr Rattenbury took such action, with the standing down and subsequent resignation of Mr Davis providing a just response to his allegations. All this took place within a week of receipt of the allegations by Mr Rattenbury.

It is alleged that another young person reported Mr Davis for inappropriate sexual contact to the ACT Greens in 2019 when Mr Davis was a candidate for election, and was told by party officials that he was lying. According to these reports, nothing was done about it. The Greens Party Office has found no record of this 2019 accusation¹² so it's not a surprise that neither Mr Rattenbury nor Mr Bromley were aware of it.

In my experience, however, it is easy to downplay children's and young people's allegations or ignore them as the young person suggested occurred here. In circumstances such as these, children and young people should always be listened to and given a voice. The Greens will need to look into their reporting and candidate selection processes to ensure that such reports, if they are made, are surfaced during selections and followed up.

The Greens made a series of judgement calls over the fortnight. In doing so, I consider that the Greens paid insufficient regard to four things:

- Firstly, to the needs and protection of vulnerable young people. The safety of children and young people should always come first, and certainly before workplace procedural fairness.
- Second, in cases such as this the strict letter of the law will always be important, but there is a genuine probity issue about whether a Member is suitable to serve in the Legislative Assembly if they are involved in high risk and potentially illegal activity of this nature. The wider community is likely to expect a high standard of probity from their representatives.
- Third, investigations that are criminal or potentially criminal in nature are complex and difficult and are rightly the responsibility of the police. That is why it is mandatory in the public service, in early learning and schools and in many other bodies and institutions that governments fund, and in the medical professions that allegations involving sexual abuse of children and vulnerable young people are reported to the police, usually within 24 hours.
- Fourth, their place in the ACT Government. The Greens thought about the issue at hand from a Greens Member's perspective, rather than from the perspective of the Member being a member of the Government, and their duties as part of the Government. It is unclear where the line is drawn between Ministers of the Executive Government and other MLAs from each of the parties.

¹² Submission by the Greens, 20 December 2023.

(c) Reporting the allegations

The timeliness and completeness of reporting the allegations to relevant authorities.

To summarise, reports began to be made to relevant authorities on 10 November and were completed on 13 November:

- In line with requirements under the Parliamentary and Governing Agreement, the leaders of the ACT Labor Party were advised of the allegations and that Mr Davis had been stood down early in the morning on 10 November.
- Mr Bromley reported the allegations to the police at 10am on 10 November.
- At around 11am the Greens Whip wrote to the Clerk of the Assembly referring allegations against Mr Davis to the Commissioner for Standards. The Clerk referred the matter to the Commissioner that day.
- At nearly 8pm, the Greens reported to the Integrity Commissioner.
- On 13 November, the Greens reported to ACT Ombudsman.
- At around 6:30pm on 13 November, the Greens made a report to the Speaker under the Child Safety Code of Conduct and Policy.

ACT Parliamentary and Governing Agreement

The ACT Parliamentary and Governing Agreement notes that “effective collaboration is based on trust...” and that the parties to the Agreement “retain distinct political identities and operating cultures”. The Agreement adds that “[T]he Parties will act in good faith and with no surprises, reflecting appropriate notice and consultation in matters relating to this Agreement. Wherever possible parties will provide each other 24 hours’ notice before any public announcements.”¹³

It’s a fact that the Greens did not give the ALP 24 hours’ notice before public announcements were made about Mr Davis being stood down. Arguably, as a Minister of the Government, Ms Davidson should have told her party leader and her Government leader about the rumours on 30 October, and Mr Rattenbury should have let the Chief Minister know on 6 November when he heard the rumours and definitely on 8 November after what he understood to be serious allegations from the young complainant on 7 November. That they did not do so reflects the judgement calls they made at the time about the veracity of the rumours and Mr Rattenbury’s concern that the internal review he had initiated on 6 November (with its tight deadline of 10 November) should be completed in order to provide procedural fairness to Mr Davis and clear information to the Chief Minister and other relevant people.

In hindsight that was a mistake as increasing Greens’ staff awareness and press discovery of the allegations on 9 November generated a maelstrom, which triggered the announcement of Mr Davis being stood down early on 10 November with only 2-3 hours advance notice to ALP leadership.

Mr Rattenbury could also have called the Chief Minister late on the evening of 9 November, once he received and digested the press inquiries, but he waited until the next morning to contact him, and

¹³ Parliamentary and Governing Agreement, 10th Legislative Assembly Australian Capital Territory, pages 2 and 5.

only provided Mr Barr's office with a copy of his initial statement at 10am on 10 November. Nevertheless, he thought this would give Mr Barr time to sleep and still importantly have a few hours' notice before the story broke in the press.

The Parliamentary and Governing Agreement specifies that wherever possible, the parties will provide 24 hours' notice of any public announcements. The timing of the announcement of Mr Davis's stand down was not of Mr Rattenbury's choosing, and I can only assume that the phrase "wherever possible" in the Agreement reflected mutual understanding between the parties that in politics as in life, sometimes things move faster than can be anticipated and 24 hours' notice is not practical or even possible.

A couple of days later on 12 November, when Mr Davis told Mr Rattenbury that he intended to resign, Mr Rattenbury let the Acting Chief Minister know shortly afterwards and ½ a day before he made the resignation public.

In the circumstances, I don't think that the Greens have breached the Agreement, but it is clear that they have not acted in the spirit of the Agreement and have certainly stretched the friendship.

Agreement parties will need to consider how they handle serious conduct issues about their MLAs in future, and may wish to consider whether the phrase "wherever possible...provide 24 hours' notice" is still completely appropriate or needs some clarification in light of these events.

I understand from the Greens that while all Labor/Greens MLAs are signatories to the ACT Parliamentary and Governing Agreement, non-Executive Greens MLAs are not in most instances treated as members of the government. They have no reporting line to the Chief Minister and are accountable instead to the Office of the Legislative Assembly. Were the opposite the case, then the Chief Minister's Office might have sprung into action on the morning of 10 November and helped the Greens with their reporting responsibilities, notably to the Speaker.

Parties to the Agreement may wish to consider these issues and when and if the Speaker of the Assembly should be advised directly about significant changes in any Member's circumstances by the relevant political party, ahead of any public announcements.

Reporting to the Police

For the fortnight leading up to Mr Bromley taking the allegations to ACT Policing on 10 November, the Greens worked through their reporting obligations to the police:

- Ms Davidson saw the reports from her staff member as non-specific rumours, without enough detail to know whether she should report them to the police.
- Mr Bromley wasn't sure if anything illegal involving either underage sex or coercive sex or illegal exchange of sexually explicit content had occurred and wanted more information before he could be confident to reasonably believe that criminal activity may have occurred.
- Mr Rattenbury asked for a quick review to provide clarity about the accusations and, before that review report was finished, the allegations were aired in the press and Mr Bromley had reported the allegations to the police.
- Mr Bromley made the police report 2 ½ days after receiving the allegations from the young complainant because he now suspected potential criminal activity.
- Mr Bromley made that police report, even though the young complainant had asked that the allegations not be given to the police.

As revealed in the process of discovery associated with this review and evident in parts (a) and (b) of this report, the Greens eventually complied with the current reporting obligations to the police, namely, they reported when they reasonably believed that there was potential criminal activity by

Mr Davis. Albeit that it took them a couple of days after they received the allegations from the young complainant to make their report, which was in my opinion too late.

The report by Mr Bromley to the police was sufficiently robust¹⁴ that the police did not push back against “non-specific rumours” and “unsubstantiated” allegations of potentially criminal activity, and appeared to accept that an offence may have been committed.

Paradoxically, if the Greens had acted consistent with trauma informed approaches, they would likely have not interviewed the young complainant (leaving that to the experts in trauma-informed practice) and may not have reported to the police at all as the young complainant had expressly wished. The complainant was then 18 and capable of making his own decisions; he subsequently refused to co-operate with the police when they followed up the reported allegations. As part of their trauma informed best practice, the police did not then press matters after the young complainant said he was not prepared to come forward nor have personal information about him used in proceedings.

Police arrangements can be problematic for people suspecting potential criminality but who are not sufficiently confident that they have enough information or proof to report their worries or make an official complaint to the police. This is because a wrong complaint of this nature can have potentially devastating consequences for all those concerned. They can be even more confusing for a young person wanting to avoid engagement with the police and the criminal justice system, or being accused of breaking the law.

There is no easy answer to the police reporting and handling conundrum. However, the proper and respectful way forward will always be to report to the police possible criminal activity of a sexual nature against a person under 16 and illegal message exchanges under 18, and to inform the young person that their health and safety is paramount in making the report, then to ensure that arrangements are made to support them through the police and judicial process if it comes to that.

Added to that, because the public expects Members of the ACT Legislative Assembly to behave honestly and properly in all they do, there should necessarily be a heightened sense of responsibility that any potential criminal sexual activity by Members should be reported to the police as soon as it surfaces. That is one of the reasons why the Assembly has a series of policies, practices and supports available to Members to ensure that they fulfil this probity behaviour expectation.

In the wake of this scandal, it may now be necessary to obligate Members and their staff to report to the police all serious potential criminal activity involving allegations of sexual activity with children and young people by politicians. Even when in doubt as the Greens were initially, reports should be made. Mandatory reporting within 24 hours of information being received would take out of the equation the wriggle room I mentioned earlier and make very clear their duty to report and to report immediately.

Other reporting obligations

When a scandal of this nature comes to light there is usually a “pile on” of reviews and reports prepared to see what was done, what action might be taken, and what should be done in the future. My responsibility in this review is to consider the timeliness and completeness of the wider reporting obligations by the Greens.

To recap, not having expected the early public release of the allegations made by the young complainant against Mr Davis, Mr Rattenbury and his staff started to pull together a list of their

¹⁴ Because of the substantiated information that he had gathered as part of the Greens internal review that was not available earlier in the process.

reporting obligations late in the night of 9 November, which they returned to on the morning of 10 November. That list was considered at the Greens Party Room meeting on 10 November, where it was made clear that the party should comply with all their reporting obligations around the affair.

Armed with their list of reporting obligations, the Greens Whip approached the Clerk of the Assembly immediately after that meeting for advice about their wider reporting obligations and how they were to be met. What followed next was a scramble to ensure that all those who should be informed were informed as soon as possible. Within two working days (the Friday 10 November and the Monday 13 November) all those who should have been informed were informed.

The information provided in the Greens' reports was not generally long, but was clear and specific and along the following lines:

"The allegations are that [Mr Davis] engaged in sexual activity with a young person or young persons that may constitute criminal behaviour. There may be other matters involving criminal offences, such as the sharing of explicit material. There may be matters that warrant dismissal. We do not know full details".

In my opinion, any authority receiving such information, would understand the gravity of what they were potentially dealing with, and would have commenced work on it immediately, had Mr Davis not resigned on the evening of 12 November 2023.

In summary, the Greens fulfilled their reporting obligations to relevant authorities.

I understand that Mr Bromley sought advice from the Chief Minister's Treasury and Economic Development Directorate, which they then sought and provided advice back from the Government Solicitor's Office. Nonetheless, the Greens path largely avoided or ignored assistance that was otherwise available to them as a political party, and which they arguably could have used, before the rumours and allegations became public knowledge:

- They did not approach the Commissioner for Standards, the Hon Ken Crispin KC, about potential Code of Conduct concerns about Mr Davis either when the rumours first surfaced or when clear allegations were made, even though Ms Davidson was well aware of the potential Code issues involved.
- They did not seek advice from the Ethics and Integrity Adviser, Mr Stephen Skehill.
- They did not report to the Speaker despite their obligations under the Child Safety Code of Conduct and Policy, until 13 November, after Mr Davis had resigned.
- They did not seek advice from the Clerk of the Assembly about their wider reporting obligations and how they were to be met until the very last minute when the press was about to release the story, and it was too late for the advice to be anything more than procedural in nature.

That they should have reported the allegations sooner to others is apparent.

It is noteworthy that the Greens' Ms Davidson and Mr Bromley intended to keep their investigations confidential. The Greens advised me that this was a trauma-informed approach designed to protect the young complainant and limit the spread of his information to only the appropriate channels.

Despite the different views of Mr Rattenbury, they told me that they did not trust the prevailing Assembly support arrangements through the Speaker to be non-partisan, which has implications for the effectiveness of the Child Safety Code of Conduct and Policy. However, the Commissioner for Standards, the Ethics and Integrity Adviser and the Clerk of the Assembly are all independent and non-partisan operators who were similarly not advised until after Mr Davis was "stood down" on 10 November.

Mr Rattenbury said that in the chaos of the moment, they didn't think of making such reports and, in any event, he considered the matter to be one for the party not the parliament to resolve. However,

the ACT Greens are part of a coalition and form the ACT Government together with the ACT Labor Party, which brings wider governmental considerations into play. It may have been that the Greens' position as part of the Government and that political partnership would have provided helpful additional handling guidance had they chosen to use it, although Mr Bromley told me that when he did advise them, no advice was forthcoming.

Ironically, the chances are that the path of relative secrecy adopted by the Greens as they investigated the rumours and allegations and dealt with them internal to the party, resulted in a faster result than had the Greens asked the Commissioner for Standards to investigate Mr Davis under the Members Code of Conduct or the Speaker to look into the allegations against Mr Davis under the Child Safety Code of Conduct and Policy. However, we will never know, as Mr Davis resigned on 12 November.

This raised an important issue in my mind about how integrity processes that can be slow and bureaucratic in nature can operate effectively in a political party parliamentary environment where immediate results are expected as soon as something becomes known. It generally requires strong commitment to integrity processes to let them run their course in a political environment, and that is what is needed if these processes are to have any teeth or use. But, I found that in the case of the ACT Legislative Assembly, its processes are generally fast and efficient.

I find it hard to dismiss Mr Rattenbury's argument that the usual practice when issues arise as a result of an MLA's actions, is for those issues to be reviewed by the party concerned. In fact, that is exactly what the Ministerial Code of Conduct provides for in that it specifies that issues to do with a Minister's conduct are to be referred to and handled by the Chief Minister.

It is not therefore inappropriate for parties or government coalitions to review internally a Member's actions, as they will be under the gun publicly if something is awry, and they will necessarily have some sway over a Member's thoughts about what they should do in the circumstances.

However, there are very sound reasons for independent and arms-length investigations by independent third parties. In terms of community expectations, I think that the public would consider it wise to take counsel confidentially in such circumstances, and to use the formal and independent investigatory processes available, whether they be the police or other authorities, to achieve a result that is more likely to be just, unconflicted and respected.

The Greens will need to consider how they build more trusting relationships with independent authorities and advisers as well as the Speaker to ensure that the processes available to them are used and respected.

Given the Greens' lack of knowledge of these services, those bodies may also need to ensure that the political parties represented in the ACT Legislative Assembly are not only aware of what they do and what they can address in terms of MLA's behaviour but that that knowledge is deeply embedded in parties and the practices of Ministerial offices. And, if the current procedures remain in place, the Speaker may need to consider how to bridge the evident concerns about her independence in matters such as this.

(d) Best practice

Best practice and possible changes to laws, policies, and procedures to ensure that allegations of sexual misconduct against an MLA particularly those involving a child or young person—are appropriately reported and investigated, and in a way that is trauma-informed and responsive to the needs of victim/survivors.

To say that the handling of the allegations against Mr Davis MLA represented a challenging situation for the Greens would be an understatement. I expect that any political party dealing with such an unfolding nightmare would have struggled to know exactly what to do and when to do it, but maybe they would likely have had a stronger eye on managing the risks and the fallout.

For those in politics, situations such as these involve a political overlay that can play out publicly in ways that no one expects. That is precisely what happened to the Greens, who up to 10 November were confident that they had done all they could do fairly and properly in investigating the veracity of the allegations and in getting Mr Davis to agree to stand aside then resign. I think they underestimated the extent to which this was always going to be a political storm.

It is in this context that I have reviewed the various laws, policies and procedures to ensure that allegations of sexual misconduct against an MLA are appropriately reported and investigated, in a way that is trauma informed and responsive to the needs to victims and survivors.

The isolation of young people

By far and away the most disturbing aspect of this review has been the situation of the young complainant, and others like him who may have had sex or exchanged sexually explicit images with older men when they were 16 or 17 or engaged consensually in underage sex. The world of police reports and government policies and procedures is a long way from their circumstances as young people wanting to avoid the criminal justice system at all costs and fearful that if they report to the police, they will be involved in a never ending and potentially life affecting round of police and court interrogations, accusations that they have broken the law by sending images of themselves, and fear that any conviction for exchanging such images may be on their record and affect their life chances and options. These fears and concerns are genuine and reflect the young peoples' relative powerlessness. They cannot be ignored.

In this review, I have found that young people want an authority to report to which is not the police but a person empowered to review their stories and expose the perpetrators so that they are stopped. In this particular case relating to an MLA, that authority exists and is the Commissioner for Standards, but the young complainant was never guided towards speaking with him.

My sense of the situation is that beyond the reporting arrangements that all young people similarly affected are usually aware of—namely the police, rape crisis and possibly the Online Safety Commissioner—the current reporting arrangements are insufficient to deal with the sexual misconduct challenges faced by the 14-17 age group. Decriminalizing the actions of young people under the age of 18 who consensually share images electronically would go some way to removing the fears and concerns of young people exploited sexually by older people, but the fact remains that unless they have a safe place to report, unlawful activities will continue to go unreported.

Trauma-informed and responsive to victims

The Speaker in her very helpful submission to this review expressed concern that “...in the absence of clear information, young people have possibly been the primary source of validating information without a clear and visible victim-centric approach to their wellbeing. From a workplace wellbeing perspective, this has been of great concern”.

I do not pretend to be an expert in trauma-informed care, nor do I consider Mr Bromley to have been or he would not have interviewed the young complainant at all nor would he have done so in a public place, in the way he did, then provided the information that the young complainant had given him confidentially and asked to be kept private, to the police, without providing the complainant the opportunity to stop him before he went to the police.

Mr Bromley told me that he put a great deal of thought and consultation into his engagements with the young complainant, and that he progressed his investigation as sensitively as possible with reference to trauma-informed principles and using knowledge acquired through his volunteering work at Lifeline and in the UK's Nightline. However, it didn't turn out well. It is clear that the trauma-informed principles of victim safety, choice, collaboration, trustworthiness and empowerment were not observed by Mr Bromley as he went about his investigations. Best practice in this case, would have involved Mr Bromley taking advice from one of the authorities available to him, not interviewing the young person, and instead facilitating the young complainant to make a referral to the Commissioner for Standards or the police, if he wished to do so.

Even though this would not have assisted the Greens to deal with the political issue of Mr Davis's rumoured activities, it would have protected the young complainant and been responsive to his needs, especially as he did want to report Mr Davis to an authority who could deal with his alleged behaviour and stop him from continuing with it with other potential victims.

The junior Greens staff members, with their deep concerns that rumours about Mr Davis be investigated and dealt with expeditiously, acted quickly and in their haste to set up the meeting between the young complainant and Mr Bromley, may also have done some damage, despite them comforting him afterwards. Better practice would have included more consideration of what the exposure might mean for the complainant and how to address his needs most supportively, away from the public eye.

It was also apparent in this review that, while the Assembly had a range of supports available to MLAs and Assembly workers to assist them to deal with this unfolding issue and offered that support widely to staff after the matter was exposed on 10 November, no tailored support was available to the young complainant who was the very person who was most in need of support. He was provided some information by text on 10 November, but this was too late and did not prepare him at all for the fallout when the matter became public that morning.

Assembly policies, procedures and advice

On the whole, the Legislative Assembly has a comprehensive and excellent suite of laws, policies and procedures to ensure that allegations of sexual misconduct are appropriately reported and investigated, in particular, the Child Safety Code of Conduct and Policy is first class because it puts the interests of children and vulnerable young people first.

In addition to the foundation of the Crimes Act 1900, the various policies and procedures used in the ACT Legislative Assembly are: the Ministerial Code of Conduct, the Code of Conduct for All Members

of the Legislative Assembly for the Australian Capital Territory, the Code of Conduct for Ministerial Staff and Staff of Other Office Holders, the Code of Conduct for Staff of Non-Executive Members, the Child Safety Code of Conduct and Policy, and the Respect in the Workplace – Bullying and Harassment Policy.

As shown in [Appendix 2](#) to this report, which is directly drawn down from Appendix 6 of the *Final Report of The Commonwealth Parliament's Joint Select Committee on Parliamentary Standards on Codes of Conduct for Parliamentary Workplaces*, the ACT stands up well with comparator Codes of Conduct in other jurisdictions here and overseas. The areas where shortfalls are possible are in terms of discrimination, obligations to report and operationalizing provisions relating to misconduct.

The first of these was already addressed by the Assembly on 30 August 2023, when Assembly Continuing Resolution 5 was amended, providing inter alia for zero tolerance of discrimination and sexual assault and harassment, a pledge by Members not to engage in such conduct, a requirement to be sensitive to the needs and feelings of any complainant and to recognize their possible need for trauma-informed care, and a number of directions as to how the complainant should be treated and supported. Perhaps because of its newness, the resolution seems to have not been fully appreciated by the Greens.

To address the other two deficiencies, the Code of Conduct for All Members of the Legislative Assembly could also be enhanced by adding two new provisions: to, firstly, include probity in the first principle which currently reads “Members should at all times act with integrity, honesty and diligence”, in order to introduce a probity requirement for MLAs to behave correctly and in a manner that befits a Member of the Assembly and, to secondly, introduce a new element: “Members must ensure that their personal conduct does not bring the Legislative Assembly or their position into disrepute or adversely affect public confidence in the integrity of the ACT’s system of government”.

For reasons of clarity in the wake of this particular scandal, the Ministerial and Members Codes of Conduct should be amended to make it abundantly clear that Ministers and Members are obligated to report possible sexual misconduct or illegality by MLAs or their staff to the police within 24 hours and to the Legislative Assembly Commissioner for Standards. The relevant ages of children and young people (under 16 for sex related issues) and under 18 for the exchange of sexually illegal material be made explicit.

Staff Codes of Conduct should be similarly amended to require mandatory reporting where the potentially illegal sexual misconduct relates to MLAs or other staff. This would bring reporting by Members and their staff into line with reporting arrangements commonly used in other parts of government or government services. The two Staff Codes of Conduct currently do not set down reporting obligations under either of the Codes, and these need to be clarified, and while the Assembly’s Respect in the Workplace – Bullying and Harassment Policy encourages reporting and provides helpful guidance on how to do it, the policy does not specifically cover reporting of illegal sexual or other illegal activity, which it needs to do.

Although the Child Safety Code of Conduct and Policy has reporting guidance, I consider that the same reporting obligations about MLA’s conduct in cases of illegal sexual activity should be common to all Assembly Codes, with mirrored words in each of them. At the moment, the Child Safety Code of Conduct and Policy requires that reports be made to the police where a complaint relates to a matter that is potentially criminal in nature, and on other issues to the Speaker where an MLA is involved, or the Clerk where senior staff are involved, or the immediate supervisor, where other MLA staff or their consultants are involved. No mention is made of the Commissioner for Standards who

should always receive a report where an MLA is alleged to be involved in child sex activity. I found that this spread of reporting options made things complicated for complainants involved in the Davis MLA situation. The provisions need to be simplified and clear where sexual offences are potentially involved, but it is good practice to do so more generally.

One of the greatest challenges with any policy or procedure is not only that people are aware of the policies and supports available to them, but that they use them. That the Greens didn't in this case identifies either insufficient education or forgetfulness. I note that Mr Rattenbury said in the circumstances he faced, he didn't think of them and that he saw the rumours and allegations as a matter for the party to manage. It is apparent that Greens MLAs and senior operatives need either to attend training or to undertake refresher courses, and need to trust and use the range of advisory services available to them, especially when dealing with the most contentious and therefore politically sensitive issues.

I should point out that educative programs run in the Assembly to educate MLAs and staff about arrangements of this sort have generally been well received, however, the induction onboarding program does not include the Child Safety Code of Conduct and Policy, which needs to be rectified.

Throughout this review concerns have been expressed about the avenues of advisory support available to MLAs who are not Members of the Executive government, the implication being that Ministers and their staff have access to public servants in the Chief Minister's Treasury and Economic Development Directorate to provide them independent advice about how to handle issues and that other Members and their staff should have similar access. Nonetheless, all MLAs have access to the Assembly Ethics and Integrity Adviser and the Clerk, who are bound by Assembly policy and practices.

While I recognise that there are concerns that more independent advice would be available through the Directorate, I am not convinced that this is true, but there may be a case to make advisory arrangements consistent across the Assembly because it is such a small organisation.

Overall, I find that there is no shortage of advice, and independent advice in particular, in the ACT Legislative Assembly.

Better practice for the future will necessarily involve a concerted effort by those advisories bodies and authorities to help Ministers, Members and their staff understand:

- what is expected of them in serious crises such as this
- or, when pandemonium breaks out, where they can go to to enlist help and support to ensure that they manage the crisis in the most effective way possible, and
- to create a better culture within the Assembly where fellows are helped by their peers to manage an unfolding crisis together.

There are other aspects of the current advisory arrangements that may need some adjustment to facilitate the proper investigation and reporting of allegations of sexual misconduct. Submissions from two Greens staff members to this review argued that there is not a clear, singular point of truth or contact who could provide advice about all possible reporting requirements. They said that because there is a lot of guidance available in many different places, Members and their staff need some kind of cheat sheet or ready reckoner that would help them know who could give them advice on a particular matter and who they can or must report to, when serious issues arise that must be recorded and dealt with by authorities. The cheat sheets should be available to everyone working in the Assembly, updated regularly as things change, and provided online.

This is a very reasonable point because clarity is always important and, I note in this context that even though the Greens made a report to the ACT Ombudsman under the Reportable Conduct Scheme, they were advised that a report need not have been made because an MLA is not a designated entity for the purposes of the scheme.

Overall, I think it is fair to say that the Legislative Assembly has a comprehensive suite of policies, procedures and advisory arrangements available to Members and their staff. With some adjustments, those arrangements can be enhanced as a result of this review, but in the end, it will always be up to Members and their staff to use the resources available to them in taking their decisions. To do that, they need to see the health and safety of children and vulnerable young people as their primary consideration and motivation.

Finally, I make the obvious point mentioned earlier that an MLA cannot actually be stood down or forced to resign, as they are an elected Member. In cases of actual criminal behaviour in other parliaments, similarly challenging handling issues have arisen, sometimes with the offending individual resigning from their party and becoming an independent cross-bencher, or resigning from their parliamentary position. I doubt that movement to the cross-bench was ever or will continue to be an acceptable alternative in the longer term. As part of the community's wish to see increased probity and integrity in government, it may be that governments and political parties nationwide will need to consider alternative arrangements where a Member or parliamentarian can be sacked. But, that is well beyond the scope of my inquiry.

Recommendations

It is recommended that:

1. The Assembly amend its Child Safety Code of Conduct and Policy to:
 - a. clearly give primacy to the safety and protection of children and young people over workplace procedural fairness considerations
 - b. provide clear guidance on the age of potential criminality, namely that it is illegal to involve in sex and sexual touching, coercive sex of any kind and procuring or grooming a child under 16 and to share sexually explicit images under age 18 and/or in relation to those under 18.
 - c. require Members of the Legislative Assembly and their staff report to ACT Policing within 24 hours of the receipt of potentially illegal sexual or sexually related conduct affecting children and young people in relation to Members or their staff, and
 - d. where the report relates to a Member, require an Immediate report to the Legislative Assembly Commissioner for Standards.
2. The Greens Party Room need to amend their policies and practices and their candidate selection processes to ensure that their governance arrangements comply with Assembly policies and procedures, best practice in terms of handling allegations against their Members, and the Parliamentary and Governing Agreement.
3. A number of amendments be made to the policies and procedures used within the Legislative Assembly to reflect the discussion at pages 28-31 of this report, in particular that:
 - a. the various Codes of Conduct and Assembly policies and procedures should be aligned to require mandatory reporting, with sufficient specification as to how that reporting will be applied
 - b. the Code of Conduct for All Members of the Legislative Assembly should adopt two new provisions focused on Member's behavioural probity and ensuring that Member's personal conduct does not bring the Assembly into disrepute
 - c. all Members and their staff be provided with an advice and reporting cheat sheet that provides an easily accessible ready reckoner for who they can seek advice from and must report to when serious issues arise
 - d. relevant advisory and reporting authorities provide enhanced education and information to all Members and their staff to familiarizes them with the assistance available to them and their obligations when serious issues arise, and
 - e. Greens MLAs and staff be retrained in the relevant Assembly policies and procedures.
4. The Assembly review its victim support arrangements for those outside the Assembly who are reporting inappropriate behaviour by Members, so that:
 - a. the Legislative Assembly Commissioner for Standards is their primary Assembly reporting authority, after victims are, of course, made aware of the importance of reporting to the police or rape crisis centres or the Online Child Safety Commissioner, should they wish to do so, and
 - b. they are given trauma-informed support and offered support to receive various forms of victim support available in the community, including through the Commissioner of Victims Rights, and

5. The Government give consideration:
 - a. to the need for a more approachable reporting authority for young people to report potentially criminal sexual activity against them that does not involve Assembly Members and/or
 - b. raising positively ACT Policing's profile in schools and universities so that young people potentially prepared to report serious illegal sexual practices feel more comfortable in doing so.

Resolution of 28 November 2023

1 ALLEGATIONS MADE AGAINST A MEMBER—HANDLING OF—REVIEW

Ms Lawder moved—That this Assembly:

- (1) notes that:
 - (a) on Friday 10 November 2023, allegations of ‘serious sexual misconduct’ were reported in *The Canberra Times* concerning then Member of the Legislative Assembly for the ACT, Mr Johnathan Davis;
 - (b) on Sunday 12 November 2023, Mr Davis resigned his position as an MLA to the Speaker;
 - (c) on Monday 13 November 2023, Mr Rattenbury MLA, gave a media conference in which he stated that he first became aware of concerns about the conduct of Mr Davis on Monday 6 November 2023 and that at that time he had asked a senior staff member to ‘conduct initial inquiries to determine the most appropriate next steps’;
 - (d) on Monday 13 November 2023, the ACT Greens publicly released a statement about the allegations against Mr Davis and his resignation, as well as the document titled *Report to Leader of the ACT Greens Internal review to understand complaints made about Johnathan Davis MLA*;
 - (e) on 29 October 2023, Ms Emma Davidson MLA asked for a meeting with the senior staff member in Mr Rattenbury’s office and the following day advised the senior staff member that ‘there were rumours circulating about Mr Davis engaging in inappropriate behaviour with younger people, and that it was possible that some of those people might be between 15 and 17’;
 - (f) there is significant concern across the Assembly and in the wider community about these allegations;
 - (g) there are also questions about the handling of the allegations, including in relation to the timeliness and completeness of reporting to relevant authorities; and
 - (h) the Standing Committee on Administration and Procedure has recommended that an independent review be conducted in relation to these matters, pursuant to Assembly resolution as outlined in this motion;
- (2) resolves that the Speaker engage on its behalf, an independent person and/or firm (the reviewer) with extensive experience in public administration, governance, or integrity matters to review:
 - (a) the timeline during which material details of the allegations were received by Mr Rattenbury, Ms Davidson and the senior staff member given responsibility for conducting initial inquiries;

- (b) the appropriateness of the steps taken by Mr Rattenbury and Ms Davidson in relation to the handling of the allegations and having regard to applicable laws, good governance, compliance with available policies, and community expectations;
 - (c) the timeliness and completeness of reporting the allegations to relevant authorities; and
 - (d) best practice and possible changes to laws, policies, and procedures to ensure that allegations of sexual misconduct against an MLA particularly those involving a child or young person—are appropriately reported and investigated, and in a way that is trauma-informed and responsive to the needs of victim/survivors;
- (3) resolves that the reviewer shall, on its behalf:
- (a) invite submissions from:
 - (i) MLAs; and
 - (ii) staff of MLAs involved in the processes conducted by, or on behalf of, Mr Rattenbury or Ms Davidson in these matters;
 - (b) afford procedural fairness to participants in the review;
 - (c) give due consideration to the wellbeing of participants and protecting their identity;
 - (d) not make findings about the substance of allegations concerning Mr Davis, recognising that criminal investigation or other proceedings may yet occur; and
 - (e) present a written report to the Speaker containing findings and recommendations in relation to matters listed at paragraph 2(a)-(d); and
- (4) further resolves that:
- (a) upon receipt by the Speaker, the reviewer's report is authorised for publication pursuant to standing order 212A, shall be circulated to Members of the Legislative Assembly and published on the Assembly website; and
 - (b) following its presentation to the Speaker, a copy of the report shall be presented to the Assembly at the next available sitting.

Debate ensued.

Question—put and passed.